



**THE CITY OF NEW YORK
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September 22, 2021

VIA ECF

Honorable Steven Tiscione
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Jacqueline Silver v. City of New York, 20-CV-3868 (DG) (ST)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of York, and the attorney for defendant Detective Michael Galgano and City of New York (collectively “defendants”). Defendants respectfully write to provide the Court with a status update of this action and to respectfully request dismissal based on plaintiff’s failure to prosecute the action., Plaintiff has not provided this Office with a release for access to plaintiff’s sealed records pursuant to NYCPL §§ 160.50 and 160.55 (“release”), notwithstanding five Court orders requesting that plaintiff provide this Office with same. *See* Docket Entry Number 18, Electronic Order dated July 12, 2021, Docket Entry Number 25, Docket Entry Number 27, and the Electronic Order dated August 26, 2021 respectively. Plaintiff has also failed to appear at two court conferences, scheduled for March 18, 2021 and August 6, 2021. *See* Docket Entry Numbers 18 and 27.

Procedural Background

Pro se plaintiff’s Complaint dated August 18, 2021 alleges *inter alia*, claims for false arrest, malicious prosecution, and infliction of emotional distress in connection with plaintiff’s arrest on August 17, 2017. *See* Docket Entry No. 1, Complaint, at page 5. On November 30, 2020, December 28, 2020 and February 22, 2021 the undersigned sent plaintiff a release for access to plaintiff’s sealed records pursuant to NYCPL §§ 160.50 and 160.55 (“release”), as plaintiff’s arrest records associated with this underlying lawsuit were sealed. *See* Docket Entry Number 16. In an order dated March 3, 2021, the Court scheduled a conference for March 18, 2021 whereby the

Court would discuss, *inter alia*, the status of plaintiff's failure to provide the undersigned with the release. *See* Electronic Order dated March 3, 2021.

The undersigned appeared for the telephonic conference scheduled for March 18, 2021, but plaintiff did not. *See* Docket Entry 18. In that same order, the Court ordered plaintiff to provide the undersigned with a copy of the release by April 1, 2021. *See Id.* In a letter dated April 13, 2021, the undersigned wrote to the Court informing the Court that defendants did not receive a copy of the release. *See* Docket Entry Number 20.

On June 1, 2021, the undersigned received text messages from plaintiff whereby plaintiff stated " I guess you are not understanding that you are harassing me, and once again I didn't CONSENT OR SIGN ANY FORM TO HAVING A MAGISTRATE I AM NOT OPENING ANY OF YOUR MAIL AS IT IS MOOT... You need to answer the complaints by the due date. You are very on the first lawsuit¹... I will report you to the bar association for fraud. You know the law and you know I didn't sign any consent form." *See* Silver Text Messages from June 1, 2021, annexed hereto as defendant's Exhibit "A."

On June 29, 2021, plaintiff filed a letter motion addressed to District Court Judge Gujarati requesting "the judge to intervene in the above action." *See* Docket Entry Number 22, page 1. In that motion, plaintiff admitted that she received "four or five letters to [her] po box." *See Id.* Plaintiff also admitted she "refused to open them," on the grounds that the letters are "irrelevant because I NEVER signed any consent form. *Id.*

In a Court order dated July 9, 2021 District Court Judge Gujarati denied plaintiff's "motion to intervene" and further referred this matter to Your Honor for pre-trial supervision. *See* Electronic Order dated July 9, 2021. Thereafter, Your Honor ordered defendants to file a status report no later than July 19, 2021 indicating whether plaintiff " has provided properly executed releases." *See* Electronic Order dated July 12, 2021. Defendants filed that status report on July 19, 2021 indicating that they have not received the release. *See* Docket Entry Number 24.

In a Court order dated July 20, 2021, Your Honor scheduled another conference for August 6, 2021 in which the Court directed plaintiff to "show cause why this case should not be dismissed for failure to prosecute and failure to comply with Court orders. *See* Docket Entry Number 25. While defendants attended the August 6, 2021 conference, plaintiff did not. *See* Docket Entry Number 27. As a result, the Court stated that it would "recommend that this matter be dismissed for failure to prosecute."² *See Id.*

¹ It appears that plaintiff is referring to the case before your Honor entitled *Silver v. City of New York, et al.*, bearing docket Number 20-CV-3868 (PKC) (ST).

² Of note, *pro se* plaintiff filed another complaint dated December 20, 2020, alleging a claim for, *inter alia* false arrest. *See* 20-CV-6348 at Docket Entry Number 1, Complaint. The undersigned sent plaintiff a release on February 2, 2021 as well as March 29, 2021, yet plaintiff failed to return an executed copy. Like in the case discussed herein, plaintiff was ordered by the Court on four occasions including May 6, 2021, June 14, 2021, July 23, 2021, and August 10, 2021 to provide an execute copy of the release, yet to date, plaintiff has not. *See* 20-CV-6348 Electronic Order

On August 18, 2021, and for reasons not entirely clear, plaintiff filed another motion for reconsideration in light of her previous motion to intervene. *See* Docket Entry Number 30. On August 26, 2021 the Court denied plaintiff's motion for reconsideration and further ordered that plaintiff "is DIRECTED to comply with all orders issued by Judge Tiscione, including orders to appear before him. *See* Electronic Order dated August 26, 2021.

To date, despite numerous Court Orders, plaintiff has failed to provide the undersigned with an executed copy of the release. Plaintiff has also failed to appear at two Court conferences including the August 6, 2021 conference where she was directed to show cause why this case should not be dismissed for failure to prosecute and failure to comply with Court Orders. Accordingly, in light of the above and the ruling from the August 6, 2021 conference Defendants respectfully request that the Court recommend dismissal of this action based on plaintiff's continuous failure to comply with Court Orders and failure to prosecute this case.

Respectfully submitted,

Joshua Kaufman

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Assistant Corporation Counsel

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dated May 6, 2021, Docket Entry Number 17, Docket Entry Number 23, and Docket Entry Number 24. Further, plaintiff missed two court conferences dated June 11, 2021 and August 6, 2021. *See* Docket Entry Numbers 17 and 24 respectively. Accordingly, in 20-CV-3868 at Docket Entry Number 27, your Honor also indicated that he would be recommending that 20-CV-6348 would be dismissed as well.